UNITED STATES
TELEPHONE
ASSOCIATION

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April 6, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

RE: CC Docket No. 98-32

Dear Ms. Salas:

Attached please find the Comments of the United States Telephone Association ("USTA") in the above-captioned proceeding. Please include these Comments in the public record of this proceeding.

Respectfully submitted,

Keith Townsend

Keith Townsend
Director and Senior Counsel
Legal and Regulatory Affairs

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Bell Atlantic for Relief from	)	CC Docket No. 98-11
Barriers to Deployment of Advanced	)	
Telecommunications Services	)	
	)	
Petition of U S WEST for Relief from	)	CC Docket No. 98-26
Barriers to Deployment of Advanced	)	
Telecommunications Services	)	
	)	
Petition of Ameritech for Relief from	)	CC Docket No. 98-32
Barriers to Deployment of Advanced	)	
Telecommunications Services	)	

COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

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April 6, 1998

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SUMMARY

Consumer demand for high-speed, advanced telecommunications networks, is undeniable. Rapid deployment of such networks by incumbent local exchange carriers will increase bandwidth for existing and new products and services, promote the further development of Internet electronic commerce, increase consumer choice, secure American competitive edge in technology, fuel economic growth, and improve the health, education and welfare of the Nation.

The Commission can make an historic commitment to this Nation's public interest by eliminating all regulations that serve as barriers to entry for local exchange carriers to deploy advanced telecommunications networks. In addition, the Commission should forebear from imposing regulations which apply to existing wireline networks of incumbent local exchange carriers. Regulatory mandates from the Commission, under the guise of promoting competition, can only foster delay and perhaps non-deployment of advanced telecommunications networks that businesses and consumers demand. The Commission should follow the hands-off regulatory approach adopted by the President regarding the Internet, which in turn has led to explosive demand for new networks, created vast numbers of new jobs, and advanced American global leadership in technology. Companies such as Qwest and Level 3 are deploying advanced telecommunications networks precisely because of the demand for more bandwidth, new products and services, and because of the absence of regulation. The investment community has responded by providing the capital that has fueled the unparalleled growth in the Internet and related enterprises. The Commission can send the right signal to Wall Street, main street, and global competitors on every street that incumbent local exchange carriers can compete on the same playing fields without the weight of costly and administratively burdensome regulations.

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COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

INTRODUCTION

The United States Telephone Association ("USTA") respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the local exchange carrier ("LEC") industry. Its members provide over 95 percent of the incumbent LEC-provided access lines in the U.S.

On January 26, 1998, Bell Atlantic filed a petition requesting relief from barriers to deployment of advanced telecommunications services, including high-speed, packet-switched data services such as Internet, Intranet and Extranet services. Similar petitions have since been

filed by U S WEST and Ameritech. The Alliance for Public Technology has requested that the Commission initiate a combined NOI and NPRM.[1]

Bell Atlantic is seeking the ability to provide high-speed, broadband services without regard to LATA boundaries, or to pricing, unbundling and separations restrictions. Specifically, Bell Atlantic requests relief from "restrictions impeding its expansion and offering of high-speed, packet-switched data services, including Internet, 'Intranet', and 'Extranet' services." Most importantly, Bell Atlantic states, the Commission should permit Bell Atlantic to: (1) provide high-speed broadband services without regard to present LATA boundaries; (2) develop its newer high-speed broadband services that operate at speeds greater than ISDN, including all xDSL services, free from pricing, unbundling, and separations restrictions designed for voice calls; and (3) sell such newer high speed broadband services outside otherwise-applicable price cap and separate affiliate rules.

U S WEST seeks similar relief in its Petition. In its filing, U S WEST requests that the Commission: (1) allow it to build and operate packet and cell-switched data networks across LATA boundaries within its in-region states; (2) permit it to carry in-region, interLATA data traffic incident to its provision of digital subscriber line services; (3) forbear from requiring U S WEST to unbundle for its competitors the non-bottleneck network elements used to provide these data services; and (4) forbear from requiring U S WEST to make these competitive services

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[1] *See Petition of the Alliance for Public Technology* ("APT") filed February 18, 1998; *Petition of U S WEST Communications, Inc.* ("U S WEST") filed February 25, 1998; and *Petition of Ameritech Corporation* ("Ameritech") filed March 5, 1998. The Commission created a consolidated filing date for Bell Atlantic, Ameritech and U S WEST applications, and set for separate comment the APT Petition. *Order*, DA 98-513 (released March 16, 1998)(the Commission stated that it was not consolidating its review of the RBOC Petitions).

available at a wholesale discount for resale.

In its Petition, Ameritech requests that the Commission: (1) eliminate the Section 271 prohibition against Ameritech's provisioning interLATA services for high-speed, broadband services by either (a) modifying the definition of a LATA to establish a single global LATA for provision of non-circuit switched data services and facilities, or (b) exercising its forbearance authority with respect to the application of Section 271 to such services under Section 706 of the Telecommunications Act of 1997 ("Act"); (2) modify the separation requirements of Section 272 for high-speed, broadband services; and (3) clarify that an affiliate that satisfies the modified separation requirements described in its petition is not an incumbent local exchange carrier for purposes of Section 251(c) of the Act.

At their core, these Petitions simply ask the Commission not to apply provisions under the Act or Commission regulations that apply to RBOC existing wireline networks. USTA supports the relief sought by the RBOCs and urges the Commission to take the steps necessary to remove the regulatory roadblocks identified by Bell Atlantic, U S WEST and Ameritech. The Commission should encourage incumbent LECs to deploy high-speed, broadband services without delay.

USTA asserts that the Commission should not impose additional regulatory barriers to the deployment of advanced telecommunications networks and services by any incumbent local telephony company, small, mid-size and large. Apart from the RBOCs, these carriers are not subject to Section 271 requirements, and in the case of many carriers, are not subject to Section 251 requirements pursuant to Section 251(f), absent a bona-fide request and subject to review by state commissions. Many of these carriers serve less populated areas in which deployment of

advanced telecommunications networks and services will be expensive. Imposition by the Commission of additional administratively burdensome and costly regulations will serve as a disincentive for such carriers to build these networks, foster apprehension among the investment community which is critical to the financing of such an endeavor, and will ultimately deprive consumers served by these carriers from the services received by other Americans. In short, should the Commission create barriers to the deployment of advanced telecommunications networks, the Commission will create a nation of have and have-nots among Americans with regard to access to advanced telecommunications services. Such polices will not only be contrary to the intent of Section 706 which requires that the Commission take affirmative action to remove barriers and apply regulatory forbearance, but will impair the future competitiveness of our nation's children and businesses as they compete to enhance America's technological and economic advantage in global markets.

As every nation in the world continues to build advanced telecommunications networks, incumbent LECs' ("ILECs") inability to deploy such networks due to regulatory barriers will greatly disadvantage American commerce. This nation cannot afford to delay deployment of advanced telecommunications networks, without also being prepared to suffer the negative economic and social consequences associated with burdensome regulations. The Commission can send the right signal to American commerce, capital markets, and foreign competitors by forebearing from the imposition of any regulation that impedes the deployment of advanced telecommunications networks and the products and services derived from such networks.

The Telecommunications Act of 1996 is a pro-competitive, de-regulatory, statute.[2] The Commission's objectives in this proceeding should mirror those contained in the 1996 Act: " ... to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition ...."[3] Companies like WorldCom/MCI, Qwest and Level 3 are rapidly building advanced networks based on demand for broadband network services, and because they are not deterred by the morass of Commission regulations imposed on ILECs. These companies will be able to meet global competitors head on. The ability of ILECs to compete on a level playing field with domestic and foreign competitors is uncertain.

There is no doubt that the stakes are high. Trade in basic telecommunications services covered by the WTO agreements opening markets to competition amounts to $600 - $675 billion annually.[4] Electronic commerce is predicted to be valued at $300 billion by the millennium.[5]

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[2] *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq.

[3] *See Telecommunications Act of 1996, Conference Report*, S. Rep. 104-230, *Joint Explanatory Statement* at 113, February 1, 1996.

[4] *See* WTO Press Release, *WTO Telecoms Deal Will Ring in the Changes* (January 26, 1998; United States Trade Representative Press Release *WTO Sets February 5, 1998 for Entry into Force Date of Global Telecommunications Agreement* (January 26, 1998)("This is the final step necessary to lock in commitments to open global markets in this $675 billion industry."). Services covered by this agreement among 72 member nations include voice telephony, data transmissions, telex, telegraph, facsimile, private leased circuit services, fixed and mobile satellite services, cellular telephony, mobile data services, paging and PCS.

[5] See WTO Press Release *Study from WTO Secretariat Highlights Potential Trade Gains from Electronic Commerce*" (March 20, 1998).

Clearly, federal, state and local regulations which impede ILECs from rapidly constructing advanced telecommunications networks will serve as barriers to entry for ILECs to compete in these markets domestically and globally. USTA urges the Commission to abandon its arcane logic and principles favoring regulation over market-based competition by adopting a hands-off approach and simply permit any carrier to construct advanced telecommunications networks without burdensome regulatory interference. The marketplace, not the Commission, will then determine winners and losers. Conversely, should the Commission engage in business-as-usual and impose regulations akin to those currently applied to ILEC wireline operations, such regulations: (1) will simply be anti-competitive; (2) are contrary to Sections 706, 11 and 10 of the Act; (3) will deprive consumers of expanded choices; (4) will serve as a disincentive to investment in ILEC networks; and (5) will adversely impact the continued growth of the economy and the competitive advantage of American technology. As such, rapid deployment of advanced telecommunications networks will become a reality for ILECs.

I. THE COMMISSION AND THE ADMINISTRATION APPEAR POSED TO SUPPORT MARKET-BASED SOLUTIONS OVER REGULATORY MANDATES

As many federal officials have recognized, deployment of advanced telecommunications networks is in the public interest. USTA believes that remarks by Chairman William Kennard, Commissioner Michael Powell and Commissioner Harold Furchtgott-Roth provide reason to be hopeful that the Commission recognizes the importance of permitting the marketplace, not regulatory mandates, to govern Commission public policy regarding the rapid deployment of these much needed networks by ILECs. The cost of deploying, maintaining, and upgrading

advanced telecommunications networks will require significant capital expenditures. Imposition of additional regulations, and the failure to eliminate existing regulations which can only thwart immediate deployment of advanced telecommunications networks, will place domestic commerce, universities and other institutions, and the public at large at a competitive disadvantage in the global economy. Approval of the pending petitions to deploy advanced telecommunications networks by Bell Atlantic, U S WEST, and Ameritech would provide a unique opportunity for the Commission to put into practice the words spoken recently in favor of ensuring that America maintains its competitive edge through the rapid deployment of advanced telecommunications networks.

Chairman Kennard's remarks before a world conference on telecommunications development acknowledged the need for private investment capital required to build the global information infrastructure:

> ***As we all know, building a global information infrastructure is a highly capital-intensive endeavor. Neither governments nor multilateral institutions can afford the vast investment in new technologies and infrastructure that is needed to achieve universal access.***[6]

During his March 12, 1998 remarks at the Legg Mason telecommunications investment conference Chairman Kennard stated his intent to let competition and the need for innovation in public policy, not government regulations, drive the Commission's decision-making:

> ***My agenda is ... focused on competition.... I don't pick winners. I don't pick losers. Instead, I make sure that the playing field is level and the goalposts are the same height and that the rules of***

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[6] Remarks of William E. Kennard before the Second World Telecommunications Development Conference, Valletta, Malta (March 23, 1998)(emphasis added).

the game keep up with changing times.[7]

In his March 13 remarks before the Legg Mason conferees, Commissioner Powell noted the hazards of regulatory decisions which purportedly are intended to spur competition but which often lead to adverse results, forestalling competition and technological innovation:

> It is futile for bureaucratic regulatory agencies to attempt to keep pace with the demands of high technology markets. Yet, too many communications bureaucrats mouth the words of the pro-competition catechism, while still attempting to "manage" competition and technological revolution....
>
> The Act commands us all to move away from regulation and toward a world in which the market, rather than bureaucracy, determines how communications resources should be utilized.... Instead, we speculate about possible anti-competitive effects and then adopt policies intended to protect new entrants and consumers from them. ***Rather than protect these interests, however, we more often actually handicap the market and postpone the arrival of competition and consumer choice.... Conversely, when we go too far in shielding new entrants, we condemn incumbents to their existing lines of business and services, thereby stifling innovation by sophisticated firms that may be uniquely positioned to provide significant benefits to consumers.***[8]

As Commissioner Powell correctly concluded, regulators must: (1) have faith in competition and surrender control to the marketplace; (2) stress innovation in an industry driven by technology; (3) recognize that existing regulations will not work in an industry in which convergence is taking place; and (4) strive for regulatory efficiency by issuing timely decisions,

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[7] Remarks by William E. Kennard to Legg Mason "Telecom Investment Precursors" Workshop, Washington, D.C. (March 12, 1998)(emphasis added).

[8] Remarks of Michael K. Powell, before the Legg Mason Investor Workshop, "Technology and Regulatory Thinking Albert Einstein's Warning," Washington, D.C. (March 13, 1998)(emphasis added).

which reflect business realities, and the importance of the investment community as this industry deploys new and innovative technologies to meet ever-increasing consumer demands. USTA agrees with the sentiments conveyed during the Legg Mason conference.

In remarks before a recent seminar on broadband deployment, Commissioner Furchtgott-Roth encouraged the development of Commission policies that promote, not hinder, deployment of advanced telecommunications networks:

> ***Today we have before us a new industry with new ideas, ideas that have captured the imagination of American businesses and the American people. It is called "broadband technologies." And these businesses come to Washington with a refreshingly different message. They don't say "help and protect us." They don't say, "federal government, please 'grow' our business."***
>
> ***They do, however, ask for special treatment. Their special treatment is "Leave us alone. Don't regulate us as you regulate those other businesses. We've seen government efforts to grow other businesses, and we think they would be lethal for us...."***
>
> Similarly, the wisest form of regulation is self-restraint.... Economic growth is the product of common people making uncommon efforts to innovate, to invest, to work hard, and to manage wisely. New technologies. New ways of doing business.... They occur when there is a reasonable expectation that these activities will be rewarded....
>
> ***So what can we do to ensure that the FCC does not stunt economic growth and the development of new technologies? First, I believe that ... the Commission can take.... [action] ... under the Section 706 proceeding.... But, in a larger sense, what is needed is not more regulations and more proceedings. What is needed is what I would term rational regulation. Regulation that takes into account the costs and benefits, and moves forward only where benefits clearly exceed costs.***[9]

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[9] Comments of Harold W. Furchtgott-Roth, before the Economic Strategy Institute, Washington, D.C. (March 3, 1998)(emphasis added).

The Assistant Secretary for Commerce and Director of the National Telecommunications and Information Administration, Larry Irving, has also voiced his support for the elimination of regulations that impede the development of new technologies, products and services. In commenting on the growth of the Internet and the importance of further advancement of the economy, the Assistant Secretary stated:

> Where was the government in all of these developments? In the United States, for the most part, the government has been out of the picture -- and that is where we should be. ***Virtually all of the decisions with respect to the development and employing new technologies are being made by and in the marketplace. The drivers of this digital revolution are the entrepreneurs, the inventors, and the consumers. In most instances, these developments involve decisions that government cannot and should not affect***. The Clinton Administration believes that the Net has experienced its skyrocketing growth precisely because it has been viewed as a work in progress and has not been regulated. ***We fear that most regulation at this point in time will serve simply to limit private sector investment and innovation, thus stifling the Net's growth***....
>
> ***We should always be wary of the burdensome nature of regulation***.... First government should create a favorable climate for investments. We must push forward on efforts to liberalize markets. We must realize the promise of the Telecom Act of 1996. And implementation of the WTO agreements on basic telecom services and information technology is critical. ***Together, liberalization and increased private investment will result in more ubiquitous networks, which in turn will drive technology and its applications into the workplace and the home***.[10]

On July 1, 1997 President Clinton released a report entitled *A Framework for Global*

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[10] Remarks by Larry Irving, Assistant Commerce Secretary - National Telecommunications and Information Administration, "Government Self-Control: Resisting the Urge to Regulate," before the *Wall Street Journal* Technology Summit "Business and Technology in a Digital Economy," New York, NY (October 15, 1997)(emphasis added).

Electronic Commerce which outlined five principles to govern the Administration's vision of the emerging electronic marketplace: (1) the private sector should lead; (2) government should avoid undue restriction on electronic commerce; (3) the aim of government involvement is to support the development of a "predictable, minimalist, consistent, and simple legal environment for commerce"; (4) government should recognize the unique qualities of the Internet; and (5) electronic commerce over the Internet should be facilitated on a global basis.[11] President Clinton's statement in support of the report favors regulatory forbearance:

> We want to encourage the private sector to regulate itself as much as possible. We want to encourage all nations to refrain from imposing discriminatory taxes, tariffs, unnecessary regulations, cumbersome bureaucracies on electronic commerce.[12]

The Administration has also initiated funding to support further technological advancements in the Internet. The Next Generation Internet ("NGI") project was initiated in October 1996 with the goal of enhancing economic growth:

> The potential economic benefits of this initiative are enormous. Because the Internet developed in the United States first, American companies have a substantial lead in a variety of information and communications markets. The explosion of the Internet has generated economic growth, high-wage jobs, and a dramatic increase in the number of high-tech start-ups. The Next Generation Internet initiative will strengthen America's technological leadership, and create new jobs and new market opportunities.[13]

The NGI initiative is a multi-agency federal research and development program that is

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[11] *A Framework for Global Electronic Commerce* at 1-18, released July 1, 1997.

[12] Remarks of President Clinton (July 1, 1997).

[13] Whitehouse Announcement (October 10, 1996) at www.ccic.gov/ngi.

developing advanced networking technologies and new applications connecting universities and national labs, that require Internet capabilities that are 100 to 1,000 times faster end-to-end than today's Internet.[14] In releasing the implementation plan for the NGI, seeking funding for $288.3 million in (FY) 1998 for all Large Scale Networking, with $100 million designated for the NGI, the Administration expressed the importance to the United States of advanced Internet networks:

> The Internet has grown at nearly 100 percent per year since 1988 and Internet traffic has been growing at 400 percent per year. The Internet has created jobs and whole industries. American business and government organizations are increasingly dependent on it.
>
> Today's Internet has to meet the demands of users numbering in the millions, and by the year 200 more than half of the U.S. population is expected to have access to it. In addition, the Internet's current capabilities are strained by the need for higher bandwidth and multimedia applications. In order to meet these needs and allow American industry and the public to benefit from the coming exponential improvements in computing and communications, we must make a few key strategic R&D investments now.[15]

On February 26, 1998, the Administration announced research grants to 29 universities across the country to further the development of Internet2. The Internet2 project involves over 120 universities working to develop advanced networking technologies and applications in research and education. These universities are connecting to the National Science Foundation's very high performance Backbone Network Service ("vBNS"). Internet2 is complementary to the NGI with the goal of ensuring broadband connectivity between existing federal agency

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[14] *See Next Generation Internet Implementation Plan*, National Coordinating Office for Computing, Information, and Communications (released February 1998).

[15] *Id. Executive Summary* at 1

networks in order to enable seamless interaction between researchers based at Internet2 universities with their federal laboratory colleagues. In funding vBNS and other Internet2 projects, President Clinton stated: "By building an Internet that is faster and more advanced, we can keep the United States at the cutting edge of Internet Technology...."[16]

The United States Trade Representative recently urged WTO members not to add additional regulations on global electronic commerce.[17] Clearly, unfettered deployment of advanced telecommunications networks is fundamentally important to the growth of electronic commerce.

What is also clear from the public statements of the Chairman, Commissioners, the Assistant Secretary for Commerce, the United States Trade Representative, and President Clinton is their recognition that the marketplace, not suffocating regulations, must determine the success of the deployment of advanced telecommunications networks and electronic commerce

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[16] Remarks of President Clinton (February 26, 1998). According to an Internet online article extolling the virtues of the NGI, Internet2, and vBNS, the need for advanced telecommunications networks and increased bandwidth capabilities is needed today. *See* Stamper, *End of the World Wide Wait*, ABCNEWS.com at www.abcnews.com/sections/tech/DailyNews/inetii0305.html (March 5, 1998). The article described the inability of existing Internet capacity to display a three-dimensional brain map based upon an MRI scan. The researchers complained that the current Internet is way too slow and unstable to display the image. By contrast, Internet2 speeds, powered by the vBNS built by MCI for the National Science Foundation, can send 322 copies of a 300-page book every seven seconds. *Id.* at 2. This speed will is expected to quadruple in two years. Moreover, Internet2 was used to display the work of the medical researchers at a federal networking task force in Washington, D.C. Unfortunately, consumers who experience delays in accessing the Internet must "wait to stop waiting" for their Internet transactions to be completed because Internet2 type services are expected to take years to reach them. ILECs are prepared to build the advanced networks that will provide businesses and consumers with high-speed access to the Internet.

[17] Presentation by U.S. Ambassador Rita Hayes on *Electronic Commerce: Duty Free Treatment for Electronic Commerce* to the WTO, released February 19, 1998.

domestically and globally. In addition, investment by the federal government in research and development of advanced telecommunications networks reflects the Administration's recognition that rapid deployment of such networks is critical to maintaining American's technological and economic edge in exploitation of the Internet and the development of electronic commerce. The absence of artificial government barriers to deployment of such networks will send the right signals to the investment community that government will not stand in the way of deployment of new and innovative networks. Conversely, imposition of regulations that seek to define what only competitive markets are best equipped to resolve -- winners and losers as chosen by businesses and consumers -- will have a crippling impact on the American economy, and the ability of American businesses and its citizens to compete in a global marketplace.

II. PURSUANT TO THE 1996 ACT THE COMMISSION SHOULD REMOVE REGULATORY ROADBLOCKS TO ENCOURAGE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS SERVICES

Even before the passage of the Telecommunications Act of 1996, Congress expressed its intent to encourage the deployment of new technologies and services by adding Section 157 to the Communications Act of 1934. That section states that it "shall be the policy of the United States to encourage the provision of new technologies and services to the public." It goes on to place a burden on any party who opposes a new technology or service to prove that such a proposal is inconsistent with the public interest.

Congress expanded that policy in the Telecommunications Act of 1996. Section 254 includes access to advanced telecommunications services in all regions of the nation as one of the principles of universal service, and prescribes a test for determining whether advanced

services should be included within the "evolving" definition of universal service.

Section 706 directs that the Commission and the state commissions "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans ... utilizing ... price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market or other regulating methods that remove barriers to infrastructure investment." Advanced telecommunications capability is defined as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics and video communications."

Thus, it is clear that Congress intended the Commission to focus on ways to encourage and, in fact, accelerate the deployment of advanced services for all consumers. As is discussed in detail in the Bell Atlantic and other petitions, the Commission has recognized its duty in this regard, yet it has not acted to provide the necessary relief in order to make Congress' mandate a reality. As will be explained below, the Commission must act to remove the regulatory barriers which constrain incumbent LECs from providing advanced telecommunications services. The best way to proceed is to grant the individual relief requested by Bell Atlantic, U S WEST and Ameritech and to institute the combined NOI and NPRM recommended by APT. In that way, the Commission can provide specifically tailored relief to encourage individual company deployment while undertaking the comprehensive review necessary to ensure that none of its rules and regulations serve as a disincentive to the provision of advanced telecommunications services. As discussed by Bell Atlantic and others, and as USTA will comment below, delay in providing the necessary regulatory relief only serves to harm the public interest. USTA further recommends that the Commission include this issue as part of its biennial review of regulations

required under Section 11 of the Act, and repeal or modify those regulations, such as those listed in the aforementioned petitions, which in any way hinder the deployment of advanced telecommunications services.

III. CURRENT REGULATION STIFLES THE PROVISION OF ADVANCED TELECOMMUNICATIONS SERVICES

USTA has long been concerned about the impact of regulation on incentives to innovate and invest in telecommunications infrastructure and consistently has urged the Commission, and recommended ways to change the rules in order to permit deployment of new services in a timely manner.[18] As made clear in USTA's comments in the access reform proceeding, "In the presence of competitive entry maintaining unneeded regulatory constraints on the incumbent has the potential of distorting market outcomes and having long-lasting deleterious effects on industry performance...."[19]

Economist Jerry Hausman has argued that regulations have a significant dollar impact on the deployment of new technologies and services and argues in favor of the Commission adopting a cost benefit analysis prior to imposing regulatory mandates.[20] Professor Hausman states that the introduction of new services can lead to large consumer benefits. For example, he

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[18] *See, e.g.* USTA Comments on Access Reform, CC Docket No. 96-262 (January 29, 1997).

[19] *USTA Comments* at 23, citing Schmalensee and Taylor *Economic Aspects of Access Reform* at 22, Attachment 1, CC Docket No. 96-296 (January 29, 1997).

[20] *See* Jerry A. Hausman's *Valuing the Effect of Regulation on New Services in Telecommunications*, Brookings Institute Economic Activity Microeconomics, 1997.

cites the $1.27 billion annual gain in consumer welfare from voice messaging services since 1994, and $50 billion annual gain since the introduction of cellular services.[21] Conversely, Professor Hausman calculates that through regulatory delay, billions of dollars have been lost, with cellular losses totaling over $100 billion.[22] Professor Hausman's conclusions regarding the impact of regulatory delay apply equally to Commission decision-making in this proceeding:

> Regulation, as currently implemented, may well be unable to keep up with the fast-paced changes in telecommunications technology. Consumer welfare losses are likely to be quite large because of regulatory delays and pricing distortions. Past welfare losses have been in the billions of dollars per year, and the FCC's current approach may well lead to comparable consumer welfare losses in the future.[23]

Commission staffers have also favored a market-based approach over regulatory mandates to foster competition. Addressing the need to fulfill the demand for more bandwidth, one author urged the Commission to greatly limit the extent to which its actions interfere with the functioning of the Internet services market.[24] Specifically, the Commission is urged to recognize that "Government policy approaches toward the Internet should ... start from two basic principles: avoid unnecessary regulations, and question the applicability of traditional rules."[25] Commissioner Furchtgott-Roth has consistently argued that Section 11 of the Act requiring

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[21] *Id.* at 2.

[22] *Id.* at 3.

[23] *Id.* at 36.

[24] *See* Kevin Werbach's *Digital Tornado: The Internet and Telecommunications Policy*, FCC Office of Plans and Policy Working Paper No. 29 (March 1997).

[25] *Id.* at ii.

biennial review by the Commission presents a unique opportunity for the Commission to consider explicitly the cost of regulations and to eliminate those regulations that impede development of new technologies.[26]

The Commission's ongoing *Computer I, II, and III*[27] proceedings are classic examples of tortured decision-making that should be avoided in this proceeding. Any process that is still defining enhanced services versus basic, plain old telephone service, telecommunications versus information services, and the manner in which such services are to be deployed, as well as the requirements of Open Network Architecture ("ONA"), structural and non-structural safeguards and related regulatory mandates after more than a decade will simply not work in today's competitive environment.

In response to the *Further Notice*, USTA opined that "It seems logical to examine whether the body of *Computer III* rules, which were promulgated prior to the passage of the 1996 Act, are now necessary and consistent with the 1996 Act."[28] The most troubling aspects of the *Further Notice* are the Commission's requests for comment on whether to expand the scope of

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[26] *See* Remarks of Commissioner Harold Furchtgott-Roth presented at the USTA National Issues Conference, Washington, D.C. (March 4, 1998); Comments of Commissioner Furchtgott-Roth before the Economic Strategy Institute, Washington, D.C. (March 3, 1998).

[27] *See, e.g., In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20, 1998 *Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, CC Docket No. 98-10, FCC 98-8 *Further Notice of Proposed Rulemaking*, released January 30, 1998. Footnotes 1 and 2 of the *Further Notice* present a dizzying capsulation of the more than decade-old proceeding involving deployment of enhanced services and Open Network Architecture. *See Further Notice* at 3.

[28] *USTA Comments* at 1-2 (March 27, 1998).

Computer III beyond the RBOCs and GTE, and the unbundling requirements in the Act.

Specifically, the Commission asks the following questions:

> ... we ask whether the Commission's *Computer II* decision should now be interpreted to require facilities-based common carriers that provide information services to unbundle their telecommunications services and offer such services to other ISPs under the same tariffed terms and conditions under which they provide such services to their own information services operations.[29]

and

> ... whether, pursuant to our general rulemaking authority contained in section 201-205 of the Act, and as exercised in the *Computer III*, *ONA*, and *Expanded Interconnection* proceedings, we can and should extend some or all rights accorded by section 251 to requesting telecommunications carriers to pure ISPs.[30]

In urging the Commission to withdraw these questions from consideration, USTA expressed its concern that these questions increase, not lessen, regulatory burdens imposed upon ILECs:

> USTA is particularly troubled because the questions send the signal to the local exchange carrier industry that the Commission is contemplating increasing regulatory burdens on ILECs rather than aggressively seeking opportunities to lessen the regulatory burdens on them as competition increases in both the telecommunications and information services markets.[31]

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[29] *Further Notice* at 26, ¶42. The Commission now has underway at least three proceedings that address, in some manner, the deployment of advanced telecommunications networks and services: this docket, *Computer III*, and the inquiry on Internet access and other information services that use the public switched network. *See Usage of the Public Switched Network by Information Service and Internet Access Providers*, CC Docket No. 96-263, *Notice of Inquiry*, 11 FCC Rcd 21354 (1996) (*Information Service and Internet Access NOI*). As the Commission stated in the *Further Notice*, "We intend in that proceeding to review the status of ISPs in a more comprehensive manner." *See Further Notice* at 27, footnote 131.

[30] *Further Notice* at 50, ¶96; *USTA Comments* at 2.

[31] *USTA Comments* at 3.

The Commission's decision to impose eligibility and ownership restrictions on ILECs, which excluded them from bidding for and owning the largest spectrum license for Local Multipoint Distribution Service ("LMDS") in-region, is another example of failed Commission policy.[32] LMDS spectrum can be deployed to provide voice, video, data and Internet services. The $578 million raised in the recent auction was well below the $4 billion market valuation for the licenses. In addition, 122 license were not sold, with many unsold licenses located in small and rural communities with the possibility that LMDS will be delayed or never deployed. As USTA explained in its recent letter to Chairman Kennard, these results, though unwelcome, were predictable.[33] USTA noted that the auction results are clear evidence that the Commission's LMDS policy has sent the wrong signal to the investment community, consumers, and potential bidders, regarding the viability of LMDS.[34] The Commission was urged by USTA to eliminate the ILEC eligibility and ownership restrictions and permit the needs of consumers, businesses, and the and marketplace, not regulations, to govern the deployment of advanced

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[32] *See Third Order on Reconsideration*, FCC 98-15 (released February 15, 1998), Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules To Redesignate the 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Petitions for Reconsideration of the Denial of Applications for Waiver of the Commission's Common Carrier Point-to-Point Microwave Radio Service Rules, CC Docket No. 92-297, Suite 12 Group Petition for Pioneer Preference, PP-22; *Second Report and Order, Order on Reconsideration*, and *Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545 (1997); *petitions for review denied, Melcher v. F.C.C.*, 134 F.3d 1143 (D.C. Cir. 1998)(Case Nos. 93-1110, *et al.*).

[33] Letter from USTA's Roy Neel, President and CEO to FCC Chairman William E. Kennard (March 26, 1998).

[34] *Id.* at 2.

telecommunications networks:

> The continued growth of the economy, and the competitive advantage of American technological expertise, will depend upon the ability of USTA's members to use their financial and technical resources to create the networks and services that the public demands without barriers to entry constructed by the Commission. In the forthcoming reauction, USTA urges the Commission to eliminate the eligibility and ownership restrictions that have stifled competition for LMDS, and left many small and rural areas without any bids for the licences serving such communities. These simple modifications to the Commission's LMDS regulations would (1) permit ILECs to participate on a truly level playing field; (2) increase the potential that all communities will be served by LMDS; (3) provide capital markets with confidence that LMDS will be deployed nationwide and thus enhance the interest of the investment community in providing the financing necessary to build LMDS networks; and (4) send the correct signal that the Commission is prepared to remove artificial regulatory barriers that serve as disincentives for ILECs to develop other new and innovative networks and services.[35]

USTA agrees with the comments of Commissioner Furchtgott-Roth in the *Computer III* proceeding that "Section 11 has two components: a public policy against unnecessary regulations and a procedure to find and remove all such regulations every two years."[36] As the Commissioner lamented, the Commission's *Further Notice* does not represent an effort to remove unnecessary regulations. The Commission, however, must undertake to adopt the principles of Section 11 and Section 706 of the Act if the American economy and consumers are to benefit from the rapid deployment of advanced telecommunications services.

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[35] *Id.* at 4.

[36] *Further Notice*, Separate Statement of Commissioner Furchtgott-Roth (January 30, 1998).